

REMARKS

Claims 1-17 and 25-30 are pending in the Application.

Claim 25 has been amended in order to remove the language the Office found unsupported. Thus, it is submitted, the rejection under 35 U.S.C. 112, first paragraph, is now obviated. Similarly the rejections under 35 USC 112 to claims 26 – 29, which depend from claim 25, are also obviated.

Claims 31 and 32 have been cancelled. Thus it is submitted, their rejection under 35 U.S.C. 112, second paragraph, is now mooted.

Claims 1-6, 9-11, 13-17 and 25-32 are rejected under 35 U.S.C. § 102(b) as anticipated by, or in the alternative, under 35 U.S.C. § 103(a) as obvious over Morman (U.S. Patent No. 5,336,545) ("Morman.") Applicant respectfully traverses the rejection as to Claims 1-6, 9-11, 13-17 and 25-30, as claims 31 and 32 are no longer in the case.

Previously, Applicant asserted that the consolidation process of the claims provides a different material than the necking that occurs in Morman. The Examiner has disagreed with that position, noting that Morman's necking involves tensioning, as does consolidation.

Applicant had also noted that consolidation provides a set to the material. The Examiner, in response, stated that set is not clearly defined in the specification (sec. 9 of the Office action dated June 22, 2005) and so the two processes are the same.

Applicant respectfully disagrees with the Examiner's conclusion. The word "set" is clear in the context. For example, in the Hassenboehler et al. (U.S. Patent No. RE 35,206) ("Hassenboehler") reference, set is provided to the consolidated material:

It is preferred that the consolidated and annealed web leaving the oven be cooled, either by ambient temperature or supplemental air to impart a set to the fibers in the deformed condition. The consolidated heat set web can be rolled up for later conversion to end use products. (Col. 9, lines 39 – 43.)

Moreover, a dictionary definition of set is: "A permanent firming or hardening of a substance, as by cooling." (The American Heritage® Dictionary of the English Language, Fourth Edition. Houghton Mifflin Company, 2004, available through google.com – "definition: set." 3rd noun definition.)

Accordingly, it is submitted that the meaning of set is clear.

In contrast, Morman's necking of its material has no "set." See, for example, Morman at Col. 5, lines 41 – 47:

...the neckable material 12 is tensioned so that it necks a desired amount and is maintained in such tensioned, necked condition while the elastic sheet 32 is joined to the necked material 12 during their passage through the bonder roller arrangement 26 to form a composite elastic necked-bonded laminate 40.

Thus, the Morman material cannot be compared to the material of the present claims. There is no set of the material in Morman – the necked or tensioned material is maintained as tensioned until laminated.

Any bonding in Morman may be done in various ways. As the Examiner noted, heat may be used in bonding. However, the Examiner cannot presume from Morman's heat bonding that a set will result. Morman makes no mention of that possibility, and in fact, teaches away from any sort of set being imparted to the necked material because the heat is used to soften the elastic layer – not the necked material layer:

Necked materials may be joined to the elastic sheet 32 at least at two places by any suitable means such as, for example, thermal bonding or ultrasonic welding which softens at least portions of at least one of the materials, usually the elastic sheet because the elastomeric materials used for forming the elastic sheet 32 have a lower softening point than the components of the necked material 12. (Col. 8, lines 54-61.)

Morman's use of thermal bonding, melting the elastic layer with a lower softening point to form a bond, cannot be construed to provide any set to the necked material – Morman does not even mention the possibility.

Finally, the Examiner's rejection of the proof Applicant offered is noted. However, Applicant submits that the Examiner, in rejecting the proof, ignored the differences between consolidation and necking. As was noted above, the set provided by consolidation gives the material the strength that Applicant has claimed. The Hassenboehler reference details the material change in a consolidated material. Those changes cannot be compared with Morman's simple necking process – nor with regard to any subsequent thermal bonding in Morman. Morman's thermal bonding could not affect the material properties of any necked layer – the bonding would prevent any such change. That is, the fibers that the Examiner posits would be realigned in Morman's thermal bonding could not undergo movement as he suggests – they are bonded to the elastic, and any thermal bonding simply melts the elastic, as Morman teaches. Accordingly, and contrary to the Examiner's position, there is no inherent strengthening in Morman.

Accordingly, it is submitted that: "set" is definite as applied to the present claims; Morman does not teach any type of "set;" and the inherent properties of the Morman process would most likely weaken any laminate. Therefore, the claims at issue are

patentable over Morman.

Applicant notes the Examiner's additional remarks regarding claims 3, 4, 5, 6, 10, 13, 15-17, and 29 however, as they depend from allowable base claims 1 and 25, Applicant submits they are allowable as well.

With all due respect therefore, Applicant respectfully requests the withdrawal of the rejection to Claims 1-6, 9-11, 13-17 and 25-30 under 35 U.S.C. § 102(b) as anticipated by, or in the alternative, under 35 U.S.C. § 103(a) as obvious over Morman (U.S. Patent No. 5,336,545) and allowance of those claims.

Claims 25-29 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Morman in view of Hassenboehler et al. (U.S. Patent No. RE 35,206). Applicant respectfully traverses the rejection.

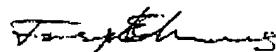
The Office has rejected Applicant's assertion that the proposed combination is hindsight reconstruction. However, as was noted above, the two references disclose very different processes: consolidation and necking. Any such proposed combination, Applicant submits again, is simply mashing two references together. Therefore, Applicant respectfully requests the withdrawal of the rejection to claims 25-29 and allowance of those claims.

Claims 7, 8 and 12 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Morman in view of Haffner et al. (U.S. Patent No. 5,789,065). Applicant respectfully traverses the rejection. Insofar as claims 7, 8 and 12 depend from allowable base claim 1, it is submitted they too are allowable. Therefore, Applicant respectfully requests the withdrawal of the rejection to Claims 7, 8 and 12 and allowance of those claims.

CONCLUSION

Therefore, for the reasons given above, Applicant submits the application is now in condition for allowance and Applicant respectfully requests early issuance of the Notice of Allowance.

Respectfully submitted,



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